

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. See 86 Ill. Adm. Code 130.220 and 86 Ill. Adm. Code 130.2013. (This is a GIL.)

July 22, 2005

Dear Xxxxx:

This letter is in response to your letter dated January 19, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Pursuant to my conversation with one of your tax professionals, on January 14, 2005, I was advised that our customer could be exempt from sales tax under Section 130.330 of your Administrative Code on their true lease. I was also advised that they are exempt from sales tax on forklifts because they qualify under the manufacturing exemption. The use of that forklift I provided to Jim is on the second page.

Given this information detailed in the paragraph above we feel empowered by your advice and our comprehension of your Administrative Code 130.330 to exempt our customer from sales tax. If this is incorrect or I misunderstood any information please inform me by responding by mail; that this is not correct and tax should be charged on this account. We have from the date of this letter exempted our customer from sales tax and will continue unless we receive written documentation contrary to the information detailed above.

DEPARTMENT'S RESPONSE:

We are without sufficient information on the nature of the transaction to provide you with a detailed response to your inquiry. In general, the information you received regarding true leases is correct, the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of

leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

As stated above, in the case of a true lease, if your company is a lessor of the property being used in Illinois, your company would incur Use Tax obligations on the cost price of the leased property. As a lessor, you must either pay your supplier, if your supplier is registered to collect Illinois Use Tax, or self assess and remit the tax directly to the Department. If, as a lessor, you have already paid taxes in another state with respect to the acquisition of the tangible personal property, then you would be exempt from Illinois Use Tax only to the extent of the amount of such tax properly due and paid in such other state. See Subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. There are also some limited exceptions to the general rule described in the preceding paragraphs for purchases of tangible personal property leased to governmental entities and exempt hospitals. See 86 Ill. Adm. Code 130.2011 and 130.2012.

Information regarding the manufacturing machinery and equipment exemption may be found at 86 Ill. Adm. Code 130.330. It is important to note that the exemption only applies to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sales or lease. In addition, the equipment must be used (over 50%) in a qualifying manner.

As indicated in Subpart (d)(3)(D) of 86 Ill. Adm. Code 130.330, the use of machinery and equipment to convey, handle, or transport tangible personal property to be sold within production stations on the production line or directly between such production stations or buildings within the same plant can qualify for the manufacturing machinery and equipment exemption. On the other hand, as indicated at Subparts (d)(4)(C) and (D) of the regulation, the use of machinery or equipment to store, convey, handle or transport materials or parts or sub-assemblies prior to their entrance into the production cycle, or the use of machinery or equipment to store, convey, handle or transport finished articles of tangible personal property to be sold or leased after completion of the production cycle does not qualify for the exemption.

To put it in simpler terms, if the forklift is used primarily to unload raw materials and take such materials to the first production station, or if the forklift truck is used to primarily take the finished

product away from the last production station, it will not qualify for the exemption. It is only when forklift truck is used primarily to take materials between production stations that the exemption will apply.

If the forklift truck is used in an exempt fashion, the lessor can avoid paying sales tax to its supplier of the forklift truck if the lessor provides its supplier with a resale number. Please refer to Subsection (g) of the foregoing regulation. The lessor should also provide the supplier with a written statement certifying that the equipment will be leased for use in a manufacturing process.

Even if the forklift truck does not qualify for the manufacturing machinery and equipment exemption, beginning on September 1, 2004, accumulated manufacturer's purchase credit (MPC) may possibly be used to satisfy some or all of the State portion of the Use Tax incurred on the purchase of the forklift truck. See 86 Ill. Adm. Code 130.331 and general information letter ST-03-0079-GIL. The Department's "Sunshine Letter" rulings may be found on the Department's internet website under the heading "Legal Research."

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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